

Appl.No.09/615,643
Response dated April 10, 2003
Reply to Office action of Dec.10, 2002

REMARKS

This application was filed with 1-32 claims. Claim 20 has been previously canceled. Claims 19 and 21-31 have been withdrawn from consideration. Claims 1-18 and 32 have been rejected. Claims 1, 8, 15, 16, and 32 have been amended. Therefore, Claims 1-18 and 32 are pending in the Application. Reconsideration of the application based on the remaining claims as amended and arguments submitted below is respectfully requested.

Amendments to the Specification

Applicant has corrected the Abstract of the Disclosure as requested by the Examiner. Namely, the terms "the present invention" have been removed. No new matter has been introduced. Therefore, Applicant respectfully requests that the objection to the Abstract of the Disclosure be reconsidered and withdrawn.

Claim Rejections - 35 U.S.C. §112

Examiner has requested clarity in Claims 1-18 and 8. The Examiner has correctly pointed out the insufficient antecedent basis in Claims 15 and 16. Applicant has amended these Claims. As such, Applicant respectfully requests that the rejection of Claims under §112 be withdrawn.

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Claim Rejections under 35 U.S.C. § 102

Claim 1 has been rejected under 35 U.S.C. §102(b) as being anticipated by Lin et al. Claims 1-3, 8-12, and 17 have been rejected under 35 U.S.C. § 102(b) as being anticipated by Dowd et al. Claims 1-3, 10, 12, 14 and 17 have been rejected under 35 U.S.C. § 102(b) as being anticipated by Lyle. Claim 32 has been rejected under 35 U.S.C. §102(b) as being anticipated by Glimcher, et al. These rejections are respectfully traversed. Reconsideration and withdrawal thereof are requested.

In regard to claim 1, Claim 1 has been amended so that the ground bone tissue is osteoinductive and the bone composite is cured into a solid structure that maintains its solid structure after hydration. None of the cited prior art items have these features. For example, Lin et al. teaches a biodegradable binder of the type that does not contain osteoinductive particles. Dowd et al. specifically requires the shaped material, even after any drying period, to become “flexible and pliable when wetted or hydrated”, column 5, lines 23-25 and 29-35.

Also, Applicant would like to respectfully suggest that Lyle does not teach a solid bone composite structure. Lyle is a coating. At best, Lyle is dependent upon the medium to which it is applied for structural integrity before and after heating of the coating. In contrast, Applicant defines the term “solid structure” such that the bone composite provides the rigidity and weight bearing properties. This effectively eliminates the use of a coating made of bone material as the solid structure.

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In regard to Claim 32, Claim 32 has been amended so that the bone composite solidifies into a force bearing solid structure that maintains a solid structure after hydration. Glimcher, like Lyle, is used as a coating. The Glimcher patent cannot support force loads and is used as a spray and uses "other materials to serve as structural supports until the crystals (of Glimcher) are replaced by newly formed bone", column 11, lines 64-66.

In regard to Claims 2-18, Claims 2-18 are dependent on Claim 1, and include features not anticipated by the prior art. For example, Claim 17 teaches that the bone composite is formed into a bone pin, screw or prosthesis. The prior art items do not show a solid pin, screws or prosthesis maintaining its rigidity. As such, Claims 2-18 are patentable.

Thus, Applicant respectfully requests that the rejection of Claims 1-18 and 32 under 35 U.S.C. §102(b) be withdrawn.

Claim Rejections - 35 U.S.C. §103

Claims 4-7 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Dowd et al. Claim 13 has been rejected under 35 U.S.C. § 103(a) as being unpatentable over Lyle in view of Bonutti. Claims 15 and 16 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Lyle. Claim 18 has been

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rejected under 35 U.S.C. § 103(a) as being unpatentable over Dowd et al. in view of Bonutti.

Claims 4-7, 13 15, 16, and 18 are dependent on Claim 1, and include features not shown in the prior art. As such, Claims 4-7, 13 15, 16, and 18 are patentable. Thus, Applicant respectfully requests that the rejection of Claims 4-7, 13 15, 16, and 18 under 35 U.S.C. §103(a) be withdrawn

Applicant has commented on some of the distinctions between the cited references and the claims to facilitate a better understanding of the present invention. This discussion is not exhaustive of the facets of the invention, and Applicant hereby reserves the right to present additional distinctions as appropriate. Furthermore, while these remarks may employ shortened, more specific, or variant descriptions of some of the claim language, Applicant respectfully notes that these remarks are not to be used to create implied limitations in the claims and only the actual wording of the claims should be considered against these references.

The Commissioner is authorized to charge any deficiency or credit any overpayment associated with the filing of this Amendment and Response to Deposit Account 23-0035.

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Respectfully submitted,


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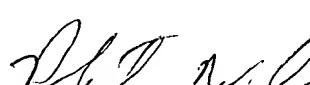
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CERTIFICATE OF FIRST CLASS MAILING

I hereby certify that this Response and Amendment and check for \$55.00 for the one month extension are being deposited with the United States Postal Service as first class mail in an envelope addressed to: Assistant Commissioner for Patents, Washington, D.C. 20231.

Phillip E. Walker


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4/10/03
Date